

Tennessee Small Business Investment Company Credit Act

Notice #09-00

Investment Tax Credits

August 2009

**INTRODUCTION**

This notice is intended to provide taxpayers and the general public with information concerning the Tennessee Small Business Investment Company Credit Act (the "Act").

Public Chapter No. 610 (2009), enacted July 9, 2009, offers a total of \$120 million in Tennessee investment tax credits to insurance companies that invest in entities certified by the State of Tennessee as "TNInvestcos."

DISCUSSION**Overview**

The Act offers a total of \$120 million in investment tax credits to insurance companies that invest in entities certified by the State of Tennessee as "TNInvestcos." Such credits will be awarded in \$20 million allocations, with no more than two allocations being awarded to any single TNInvestco. TNInvestcos will be required to invest the funds in qualifying Tennessee small and start-up businesses. Such qualified investments can take the form of debt, equity, or a hybrid of the two.

Utilizing standardized criteria, the Tennessee Department of Economic and Community Development ("ECD") and the Tennessee Department of Revenue will award the \$120 million in investment tax credits no later than December 31, 2009.

A participating insurance company will earn investment tax credits that may be applied to offset its gross premiums tax liability.

Application deadlines

Application deadlines are as follows:

- Interested parties must apply to ECD for certification as a TNInvestco no later than the close of business on **October 1, 2009**. A nonrefundable application fee of \$7,500 must be submitted at the time of application.
- On or before **November 1, 2009**, a maximum of six TNInvestcos will be notified that they have been awarded a \$20 million allocation of tax credits. TNInvestcos receiving such notification have until **November 30, 2009**, to obtain irrevocable commitments from participating insurance companies equal to the base investment amount (\$14 million for each \$20 million allocation). TNInvestcos that are unable to secure the required commitments by November 30 will be subject to a \$50,000 penalty. In such case, an alternate TNInvestco will be notified on **December 1, 2009**, that it has been awarded a \$20 million allocation and will have until **December 31, 2009**, to obtain the irrevocable commitments.

Certification as a TNInvestco

Certification as a TNInvestco will depend on the following criteria:

- The entity must be a for-profit or nonprofit partnership, corporation, trust, or limited liability company.

➤ Up to six investment tax credit allocations of \$20 million each will be awarded.

➤ The TNInvestco will distribute the tax credits to insurance companies investing in it.

➤ Application deadline is October 1, 2009.

➤ Certification as a TNInvestco depends on a number of criteria.

- The entity must have equity capitalization of at least \$500,000 in the form of unencumbered cash, marketable securities, or other liquid assets.
- The entity must have at least two investment managers with at least five years of investment experience.
- The entity must have been based, as defined by having a principal office, in Tennessee for at least five years or have at least five years of experience in investing primarily in Tennessee domiciled companies.
- The entity must have a demonstrated ability to lead investment rounds, advise and mentor entrepreneurs, and facilitate follow-on investments.

Qualification for receiving investment funds

To qualify to receive investment funds from a TNInvestco, a business must meet the following requirements:

- The business must be independently owned and operated.
- The business must be headquartered in Tennessee; its principal business operations must be located in Tennessee; and at least 60% of its employees must be located in Tennessee.
- The business must not be principally engaged in professional accounting, medical, or legal services; banking or lending; real estate development; insurance; oil and gas exploration; or direct gambling services.
- Demonstration of a high-growth potential will be an important qualification for receipt of funding.

Once a business qualifies to receive investment funds, it may continue receiving funds so long as it continues to be headquartered and principally operated in Tennessee with at least 60% of its employees located in Tennessee. ECD will conduct annual reviews to ensure compliance with program requirements.

Earning and claiming the tax credit

- A participating insurance company will earn investment tax credits against its gross premiums tax liability equal to the total amount of investment tax credits allocated to it through its investment in TNInvestcos.
- Credits will vest on the date of investment. However, no insurance company, including its affiliates, may receive a combined total of more than 25% of the maximum amount of investment tax credits authorized under the Act, regardless of the number of investments made in TNInvestcos.
- Beginning with tax year 2012 and continuing through 2015, a participating insurance company may claim yearly credit amounts equal to 15% of the allocated tax credit.
- For tax years 2016 through 2019, a participating insurance company may claim yearly credit amounts equal to 10% of the allocated tax credit.
- A participating insurance company may not utilize tax credits in excess of its gross premiums tax liability for any taxable year.
- Credit amounts exceeding the amount of a participating insurance company's gross premiums tax liability for a particular tax year may be carried forward without limitation.

➤ *A business must meet certain requirements to receive funds from a TNInvestco.*

➤ *Certain limits apply to the amount of credit a participating investor may utilize in a given tax year.*

➤ *However, unused credits may be carried forward without limitation.*

Assignments and transfers of the tax credit

- *The Department of Revenue will issue a credit memorandum to each insurance company that holds a tax credit.*
 - *A participating insurance company may transfer or assign its tax credits.*
- The Department of Revenue will issue a credit memorandum to each participating insurance company that will reflect the amount of investment tax credits allocated to the insurance company.
 - The participating insurance company may assign or transfer all or any portion of the tax credit to other companies both within and without its affiliated group.
 - In the event of an assignment or transfer of tax credits, the participating insurance company must give notice to the Department of Revenue within 30 days of the assignment or transfer, or at least 10 days prior to the filing of its gross premiums tax return, whichever is earlier. Information regarding the assignment or transfer of the tax credit will be made available to the Department of Commerce and Insurance, therefore it is important that timely notification be made to allow for proper application of the tax credits.
 - The Department of Revenue will issue a credit memorandum to the transferee or assignee of the tax credits. Additionally, the Department of Revenue will issue a revised credit memorandum to the participating insurance company in the event that it retains a portion of its tax credits.



References:

*Public Chapter No.
610 (2009)*

The information provided here is current as of the date of publication but may change as a result of new statutes, regulations, or court decisions. While this notice is intended to be comprehensive, events and situations unanticipated by this notice may occur. In such cases you should contact the department or your tax professional for further guidance.